



Common Law Students with Disabilities: Accommodation Concerns, Insights, and Recommendations

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The Centre for Equity and Human Rights (CEHR), a Student Federation service, is attentive to ensure that differences among students are not treated in ways that produce direct or indirect forms of discrimination. Our work predominantly entails matters related to the Ontario Human Rights Code. Our Commitment to students requires that CEHR works in full compliance with the spirit and intent of the Ontario Human Rights Commission and provisions of the Ontario Human Rights Code.

Purpose:

The Centre demonstrates its strong commitment to the betterment of our campus by our resolve to engage in information sharing in hope to prevent human rights complaints on campus. Upon receipt of comparable complaints within a department and/or an identified potential systemic concern (for example: identified policy, procedure, or normative practice leaving a group of individuals at a disadvantage), CEHR normatively informs numerous persons in authority including Deans, Vice Deans, and/or Program Directors in hope that the identified potential barriers will be examined and redressed if warranted.

The purpose of this document is to inform the Faculty of Law, Common Law Section, of students' expressed concerns regarding their experience of navigating their disability related accommodation requests and associated appeals. The vast majority of CEHR formal or informal cases occurring within the Common Law section of the Faculty of Law, University of Ottawa, are reported to pertain to the prohibited ground disability.

It is our hope that, after reading this document, the Faculty of Law, Common Law Section will examine their accommodation practices, policies, procedures and verify the expressed concerns as outlined below and address promptly identified barriers if justified.

The Duty to Accommodate Students with Disabilities

Post-secondary institutions including law schools and bar admission programs have an obligation to provide appropriate accommodation for students who have disabilities.¹ The Ontario Human Rights

¹ Ontario Human Rights Commission (OHRC), *Guidelines on Accessible Education* (September 2004), in "Scope of Application", under "Duty to accommodate disability", available online at www.ohrc.on.ca

Commission “reaffirms the right of students with disabilities to full participation and integration [within an accessible post-secondary] education system”.²

In order to “face the same duties and requirements as everyone else with dignity and without impediment”, the provision of the appropriate accommodations ensures that students with disabilities have equal opportunities in their educational settings.³

Identified Barriers:

Case management has led the Centre to identify several recurring barriers in Common Law students’ allegations of discrimination: Accommodation Process; Examinations Committee Appeal Decisions – Contextual Consideration of Accommodation Complaints; and Rejection of Consultation Requests with Upper Management.

Accommodation Process:

The Ontario Human Rights Commission states that, “Information [*note: including medical information*] should be disclosed to the accommodation provider only as it pertains to the need for accommodation and any restrictions or limitations. Documentation supporting the need for a particular accommodation should be provided only to those who need to be aware of the information. [...] Disclosure to faculty or staff of the post-secondary institution should be on a need-to-know basis only, and at the choice of the student.”⁴

The Centre advances that confidentiality of medical information is an important consideration for the Faculty of Law if undertaking an examination of the Common Law Section accommodation process.

Access Services has the objective of ensuring optimal learning conditions to provide a student who has a disability or a bona fide medical condition with an equal opportunity to demonstrate their academic mastery and competencies and ultimately achieve their academic and professional goals.

Normative practice dictates that University of Ottawa students, who have a disability and require accommodations measures, register with Access Services. Once registered with Access Services, a Learning Specialist obtains pertinent confidential medical documentation delineating functional limitations. Based on medical documentation the Learning Specialist develops an individualized accommodation plan, in collaboration with the student. The accommodation plan describes appropriate adaptive measures and supports needed, to ensure that the student is provided with an equal opportunity to succeed within the academic setting. It is our understanding that throughout this

²OHRC, *The Opportunity to Succeed: Achieving Barrier-free Education for Students with Disabilities Consultation Report*, (October 2003) under “Human rights law and policy in Ontario”, available online at www.ohrc.on.ca

³ OHRC, *Policy and Guidelines on Disability and the Duty to Accommodate* (March 2001), under “4.1.3 Integration and full participation” and “4.3 Most appropriate accommodation”, available online at www.ohrc.on.ca

⁴ OHRC, *The Opportunity to Succeed*, under “Post-secondary education”

process, as per best practices identified by the Ontario Human Rights Commission,⁵ Access Services adheres to the provision of accommodation with dignity, which includes the individual's own participation in the process. Access Services safeguards all confidential medical documentation (including diagnosis) leading to the identification and development of needed adaptive measures. Solely information pertaining to a student's adaptive measures and supports is shared with the individual or service providing the accommodation (not one's diagnosis).

Distinctively the University of Ottawa's Common Law Section manages accommodations in a somewhat different fashion. From our understanding, students who have documented disabilities and seek accommodations are required to meet with the Faculty's Equity and Academic Success Manager (the "Manager"). In reading the Common Law Section Student Services website, one understands that while students may choose to or not to register with Access Services, all students seeking accommodations should meet with the Manager.⁶ Case management informs our Centre that this practice can incite students to coordinate their accommodations solely with the Faculty of Law, and as such provide detailed medical documentation directly to the Faculty. Further, even though students are duly registered with Access Services they may still provide additional medical documentation directly to the Faculty, whereas normative practices would suggest continued involvement of Access Services to clarify requests as needed. Certainly, the guidelines do not convey to students the important role Access Services can play in the accommodation process.

In principle, the idea of having one Office within the Faculty of Law, whose objective is to coordinate accommodations via specialized personnel, is sound. However, the decision to accept or deny a request for accommodation including for example the request for deferrals, extensions, or excused absences can necessitate that the Manager bring forth students' requests to the attention of the Assistant Dean, Academic Affairs. Though the Faculty has the responsibility to approve or deny leave of absence requests, case management informs our Centre that at times confidential medical documentation unrelated to a student's accommodation plan was requested and in certain cases was shared with the Assistant Dean, Academic Affairs. The additional medical information requested may not be pertinent to the duty to accommodate the student where adaptive measures and supports are already identified by Access Services.

Another concern brought to the Centre's attention is that a student's medical documentation is often placed in their academic file. To the contrary and as noted above, Access Services Learning Specialists or the student exclusively provides information pertaining to the student's adaptive measures and supports to the attention of the individual or service providing the accommodation (no diagnosis provided and substantive documentation is secured). Further, a student registered with Access Services can rest assured that their confidential medical documentation will be appropriately housed within this service (not within their academic file).

⁵ OHRC, *Guidelines on Accessible Education*, under "Principles of accommodation"

⁶ University of Ottawa Faculty of Law, Common Law Section, "Long term disability or medical condition", last modified December 15th, 2009, <http://www.commonlaw.uottawa.ca/en/student-services/equity-and-academic-success/long-term-disability-or-medical-condition.html>

As such, past cases demonstrate that accommodation requests brought to the attention of the Assistant Dean, Academic Assistant, can lead this authority to: request additional medical documentation without delineating the need for specific accommodation related information; deny sought accommodations by simply stating that medical documentation provided is not sufficient regardless of a student being registered in the above-noted service or services (Equity and Academic Success Service; Access Services) where medical documentation is appropriately housed; or deny sought accommodations without seeking further clarification. Each of these practices can lead to medical disclosures that are not relatable to a student's accommodation including providing one's diagnosis.

Unfortunately, some still regard academic accommodations as lowering standards or favouritism. Case management informs CEHR that this is especially the case for students with invisible disabilities. A Faculty's access to confidential medical documentation, especially if it is placed in a student's academic file, can lead to perceived or real bias and discrimination. The Commission notes that students with disabilities continue to face negative attitudes and stereotypes in the post-secondary system.⁷ Lack of knowledge about and sensitivity to disability issues on the part of individuals in a position of authority, professors, staff and students can make it difficult for students with disabilities to access educational services equally. Students expressed to CEHR feeling that the need to either navigate and/or continually justify their accommodation needs led to tangible difficulties with coordination and communication with the appropriate decisional authorities when postulating their accommodation requests.

The Centre respectfully advances that the Common Law Section's long term accommodation procedures as practiced should be revised as there is a potential to mistakenly associate the request for accommodation with further disclosure of unrelated medical information. In fact, the Centre would advance that within her role as Manager, Jessica Simon should have the authority to assess the validity of a students' request for accommodation based on medical documentation provided to her or information provided by Access Services, and, in accordance with the identified adaptive needs, coordinate with professors or advance the request for deferrals, extensions, and excused absence for Faculty approval. Noting that it is the Manager that strikes an accommodation agreement on behalf of the students, the Manager's expertise should inform the Faculty of a valid request leaving the Faculty to accept or deny the request. In our opinion, this student-identified procedural limitation needs to be redressed.

In addition, it would be important to ensure students' academic files do not contain confidential medical documentation or any other accommodation related information, whether students in question are registered with Access Services or not.

Case management also informs our Centre of the importance for all professorial and administrative staff to know to refer students to the Equity and Academic Success Manager whenever they express difficulty meeting program requirements for medical reasons. Whenever professors or staff members are concerned with a student's expressed well-being, this concern should be shared with the student along with a referral to the Manager. University of Ottawa Regulation 9.5 (Justification of absence from an examination or of late submission of assignments) ensures students are not penalized when unable to

⁷ OHRC, *Guidelines on Accessible Education*, in "Principles of accommodation", under "Step 2: Removing barriers"

complete examinations or assignments namely due to medical conditions. It is also important that students are informed of options available to them to ensure they are not held to continue meeting their academic obligations when their health prevents them from doing so.

As such, the Centre recommends all students seeking adaptive measures be referred to register with Access Services and that confidential medical documentation including their diagnosis is appropriately housed within this service. As well, CEHR recommends that the Faculty of Law, Common Law Section institutes and communicates to staff and faculty confidentiality guidelines with respect to students with disabilities, as well as directives on the importance to connect students to the Manager should it become apparent that their health prevents them from meeting requirements.

Examinations Committee Appeal Decisions and other Committees – Contextual Consideration of Accommodation Complaints

The Ontario Human Rights Commission states that the prevention and removal of barriers means persons with disabilities should be able to access their environment and face the same duties and requirements as everyone else with dignity and without impediment.⁸ The Commission also recommends prompt resolutions to disputes, should they arise.⁹

However, case management informs the Centre that the Examinations Committee decisions often demonstrate an unwillingness to contextualize appeals based on the infringement of disability-related adaptive measures within a human rights scope. The Centre respectfully advances that the Examinations Committee often offers little consideration of disability issues imbedded within disability related appeals brought before it. Further, it is our observation that the majority of the Common Law Section's Examinations Committee's unfavourable decisions in these matters are redressed by the Senate Appeal Committee when brought at this higher level of appeal.

Similarly, the Student Appeal Centre, a Student Federation service, shares:

"From the Student Appeal Centre perspective we found that many situations which would be handled informally in other faculties, including the *Droit Civil Section*, could not be resolved in a similar manner in the Common Law Section. As a result, students must go through the Examinations Committee for consideration engaging them in a long and formal process. The decisions rendered by the Examinations Committee often provide very little or no grounds. Furthermore, we have seen students whose appeals were denied despite submitting valid medical documentation within the deadlines prescribed by university regulations. In one case, the Committee requested medical documentation even though no medical grounds were claimed by the student. In another, academic regulations were imposed strictly without mention of the student's medical documentation. This lack of consideration forces students to appeal to the Senate Appeals Committee, should they want their matter resolved, hence delaying the process even further."

⁸OHRC, *Policy on Disability*, under "4.1.3 Integration and full participation"

⁹ OHRC, *Guidelines on accessible education*, in "Accommodation process" under "Dispute resolution"

In agreement with the Student Appeal Centre, the Centre has found that the Common Law Section appeal process is cumbersome for students with disabilities who often bear the burden of providing unnecessary additional medical documentation despite being registered with the Faculty's Equity and Academic Success Service and/or Access Services. In addition, the Examinations Committee often appears to discount pertinent accommodation related information when students are advancing disability related appeals. Seeing as the Examinations Committee rejected all disability-related appeals witnessed by our Centre, and that the majority of the appeals were granted at least in part when brought to the Senate Appeals Committee, our Centre is concerned that some of the Examinations Committee's members might regard academic accommodations as lowering standards.

The Commission informs us that dispute resolution procedures for accommodation requests should comply with the *Code*.¹⁰ The Centre is of the opinion that refusal to consider the lack of provision of accommodation during an appeal process can perpetuate the experience of discrimination. As such, it is important that all Common Law Section committees with decisional powers (namely the Examinations or the Readmission Committee) consider pertinent disability related complaints within the scope of a student appeal. Without fair consideration, decisions rendered by Committees can in and of themselves leave the University proper liable. Case management also informs us that expulsion/readmission policies can also be rigidly applied without taking into account a student's individual circumstances.

As such, the Centre recommends that the Faculty of Law, Common Law Section examine appeal related practices and develop and implement where warranted a fair dispute resolution procedure that ensures compliance with the Code and the Commission's *Disability Policy*, as well as the *Opportunity to Succeed* consultation report and *Guidelines on accessible education*.

Rejection of Consultation Requests with Upper Management

The Common Law Section had recently announced the appointment of Nathalie Des Rosiers as Dean of the Faculty of Law, Common Law Section, effective July 1, 2013.

In light of this new appointment, it is our hope that the Common Law Section will welcome the opportunity to consult with students with disabilities including their representatives upon request. CEHR strongly believes that it is to our advantage to work together to redress tangible identified barriers. Students report that the refusal to grant accommodations, or the application of academic regulations without consideration of their disability-related needs, can have considerable implications for their academic life and financial situation.

¹⁰ OHRC, *The Opportunity to Succeed*, in "Appendix A: Summary of actions required" under "Post-Secondary Institutions"

Though not intentionally, past refusals of requests to meet a student with a disability to discuss their concerns can indicate a disinterest in considering the perspectives and concerns of students with disabilities.

CEHR recommends that at all levels, the Faculty of Law, Common Law Section examines the broader context in which discrimination can occur including redressing the practice to deny meeting with a student to discuss their disability related concerns if warranted.

In Conclusion:

CEHR will continue to demonstrate our strong commitment to the betterment of our campus by our resolve to engage in fruitful discussions to advance our concerns, many of which are shared with the Student Appeal Centre.

It is our hope that the Common Law Section will examine the practices, policies, procedures identified as being problematic by students with disabilities, and do that which is necessary to redress all verified concerns where necessary.